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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,869	10/31/2003	James Carlyon	S-8503(1502-84)	2018
55825	7590	03/31/2006	EXAMINER	
CARTER, DELUCA, FARRELL & SCHMIDT, LLP 445 BROAD HOLLOW ROAD SUITE 225 MELVILLE, NY 11704			HAN, MARK K	
			ART UNIT	PAPER NUMBER
			3767	

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/698,869

Applicant(s)

CARLYON ET AL.

Examiner

Mark K. Han

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 23,24,30 and 32-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10,12-22,25-29 and 31 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date see continuation.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Continuation of Attachment(s) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: 18
October 2004; 31 May 2005; 11 January 2006

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species I in the reply filed on 11 January 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). It appears that claims 26-29 and 31 are also readable on Species I. Claims 1-22, 26-29 and 31 will be examined on the merits.
2. Claims 23, 24, 30 and 32-37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11 January 2006.
3. Claims 1, 15, 20, 26 and 27 link(s) multiple species. The election of species requirement among the linked species is subject to the nonallowance of the linking claim(s), claims 1, 15, 20, 26 and 27. Upon the indication of allowability of the linking claim(s), the election of species requirement as to the linked species shall be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104. Claims that require all the limitations of an allowable linking claim will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

Applicant(s) are advised that if any claim(s) including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the

continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where an election of species requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. In re Ziegler, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-10, 12-22, 25-29 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,616,630 to Woehr et al. (hereinafter “Woehr”).

Woehr discloses a piercing member 16, a clip having a first cavity 58, the first cavity being movable in a movable orientation (Fig. 1A) and a binding orientation (Fig. 1B), first leg 40, having a second cavity 56 with a distal part 46 configured to engage a medical device, a second leg 44 having a bearing surface 42. See Figures 1A and 1B. See also col. 5, line 54 through col. 6, line 62.

In reference to claim 4, Woehr also discloses a plate 40 that defines the first cavity.

In reference to claim 5, it is considered that the proximal part of first leg 40 is substantially perpendicular to the transverse axis of the first cavity 58.

Art Unit: 3767

In reference to claim 6, second leg 44 has a proximal part that is perpendicular to the transverse axis of the first cavity.

In reference to claim 7, the first leg has a transverse portion that defines second cavity 56.

In reference to claim 8, distal part 46 of first leg is an arm.

In reference to claim 9, Woehr discloses a housing 52.

In reference to claim 13, Woehr discloses flash chamber 22.

In reference to claim 14, Woehr discloses a catheter 24.

Allowable Subject Matter

5. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark K. Han whose telephone number is 571-272-4958. The examiner can normally be reached on Monday to Friday, 9 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on 571-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

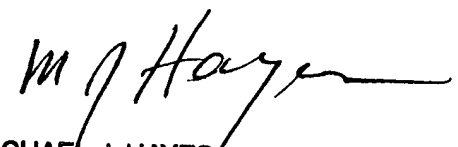
Art Unit: 3767

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark K. Han
Patent Examiner
Art Unit 3767

mkh
March 20, 2006



MICHAEL J. HAYES
PRIMARY EXAMINER